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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re CHRISTIAN K., a Person Coming
Under the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

JULIE K.,

Defendant and Appellant.

A155046

(Alameda County
Super. Ct. No. OJ14022433-02)

Appellant Julie K. (Mother) appeals from an order denying her petition to have her son placed in her care after an extended, unsupervised visit following this court's reversal of the termination of her parental rights. Although mother shares a close relationship with her son and has made impressive strides by remaining sober and improving her life, we cannot conclude that the juvenile court abused its discretion when it denied the petition. We therefore affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

This is the third appeal we have considered in these proceedings. We previously described the factual and procedural background both when we reversed the juvenile court's termination of Mother's parental rights (*In re Christian K.* (Sept. 7, 2017,

A150346 [nonpub. opn.] (*Christian K. I*) and when we affirmed a post-permanency review order (*In re Christian K.* (2018) 21 Cal.App.5th 620 (*Christian K. II*)). We briefly summarize that background here.

Respondent Alameda County Social Services Agency (Agency) filed a dependency petition in February 2014 as to then four-year-old Christian alleging that his parents' struggles with drug abuse affected their ability to parent him. Mother made progress in her case plan but failed to reunify with Christian, and the juvenile court terminated reunification services and scheduled a selection-and-implementation hearing. Mother continued to make improvements in her life and, in October 2016, filed a petition to change court order under Welfare and Institutions Code section 388¹ (October 2016 section 388 petition) asking that Christian be returned to her care. The juvenile court did not specifically rule on the October 2016 section 388 petition. The court did, however, terminate Mother's parental rights following a hearing in January 2017 and selected adoption by Christian's paternal grandmother (Grandmother), who lives in Denmark, as the permanent plan.

Throughout this period, the people involved in making placement decisions acknowledged that Mother and Christian were well bonded, and it was clear that it was a close case whether Christian should be returned to Mother's care. In response to Mother's October 2016 section 388 petition, the Agency at first represented that both Mother and the grandparents would provide loving homes for Christian and that there also were concerns about both homes. It later changed its recommendation and asked that Christian be adopted by Grandmother and her husband (Step-Grandfather) and that parental rights be terminated. Christian's court appointed special advocate (CASA), meanwhile, submitted a report to the court expressing support for Mother regaining custody of Christian, assuming she had complied with her case-plan objectives. At the selection-and-implementation hearing, Christian's counsel agreed that Christian was "extraordinarily bonded to his mother." In reversing the order terminating parental

¹ All statutory references are to the Welfare and Institutions Code.

rights, we observed it was undisputed that Mother and Christian shared a close relationship.

After Christian visited with Grandmother and Step-Grandfather several times during their visits to the United States, the juvenile court in June 2017 ordered that Christian take part in a 30-day trial visit in the home of the paternal grandparents, an order we upheld in *Christian K. II, supra*, 21 Cal.App.5th at pages 628-629. Christian's visit began on June 25. There is no dispute that the grandparents, who are in their early 60s and have been married for more than 20 years, provided good care for Christian in Denmark. They live in a "clean, nicely organized" two-bedroom house with a spacious yard. Christian has his own bedroom that has two beds, one for him and one for when friends sleep over. Grandmother is a stay-at-home grandparent, and Step-Grandfather works for an airline that offers low-cost airfare to employees, which makes it easy for the grandparents and Christian to travel to the United States.

By the end of July 2017, the Agency recommended that the visit end, that Christian be returned home from Denmark, and that Christian return to his foster mother with the goal of adoption. According to an addendum report, Christian "has consistently expressed that he does not want to live in Denmark with his grandmother," and he "questioned why he could not live with his mother." During telephone calls with the social worker while he was in Denmark, Christian repeatedly said he missed Mother and his two adult siblings, wanted to return home, wanted to be adopted by the foster mother with whom he was previously placed, and hoped the social worker would tell the judge everything he had said. When told about Christian's concerns, Grandmother said she considered them to be age-appropriate statements by a child moving to a new place. At a brief hearing on July 27, the juvenile court continued all previous orders, and Christian remained in Denmark.

At a hearing on August 2, 2017, county counsel and an attorney representing the minor recommended that Christian be ordered returned from Denmark, to be adopted by his former foster mother. The CASA had concerns that the foster mother had been "more and more manipulative and obstructive," but that she would provide adequate care for

Christian. The CASA also noted that Christian, then seven-and-a-half years old, missed Mother and was having difficulty learning Danish. The juvenile court declined the Agency's recommendation, stating that considering the totality of the circumstances, "I really do think that this child is going to be better off with the grandparents, just because this child is with blood relatives, and that's blood, and that's very important." The court ordered placement with the grandparents over the objection of Christian's attorney, and also ordered generous telephone calls with Mother.

In September 2017, this court reversed the order terminating Mother's parental rights, and it remanded the case for the juvenile court to rule on Mother's October 2016 section 388 petition. (*Christian K. I, supra*, A150346.) A different judge was thereafter assigned to the case in the juvenile court.

Christian's CASA spoke weekly with Christian throughout this period, and she reported in December 2017 (after remand in *Christian I*) that Christian appeared to be adjusting well in Denmark and was bonding with Step-Grandfather. She recommended that Christian's placement should continue in Denmark with Grandmother as guardian and that visits with Mother during vacations should be arranged.

The grandparents traveled with Christian from Denmark and attended a brief hearing in the juvenile court in early December 2017. Before continuing the matter, the juvenile court permitted visits between Mother and Christian and granted the Agency discretion to allow possible overnight visits. Christian enjoyed several extended day visits with Mother and his two adult siblings.

At a continued hearing in January 2018 where scheduling matters were discussed, Christian's attorney stated that "[t]o say he [Christian] wants to come home is a little bit of an understatement. He desperately wants to come home." The CASA said it was "maybe exaggerating" to say Christian "desperately" wanted to return home "because he does seem to be [doing] very well in[] his environment," but that "I can see him doing really well with his mother if her situation is ready for him, but at the same time, right now, he's in quite a good nurturing place."

Mother reported she had remained sober since July 2015, and she had been employed for more than two years. Mother spoke weekly with Christian, and their communication meant a lot to her. Mother sought to reunify with Christian after he finished his school year in Denmark. She rented a small, one-bedroom “in-law” suite attached to a house with her boyfriend. The social worker reported that Christian would not have a separate bedroom if he lived with Mother, and Mother explained that she planned to put a bed in the hallway area for him.

Christian continued to adjust to his life in Denmark. He made friends, played soccer, and learned Danish. He spoke monthly with the social worker, and gradually he stopped asking so frequently to return to California. The social worker asked Christian in late February 2018, when Christian was eight, how he felt about living with Mother and her boyfriend, and he responded that it was “really hard to say, I don’t know.” When given a choice between living with Mother and visiting his grandparents in Denmark or living with his grandparents and visiting Mother, Christian said he would choose living with Mother, but he asked the social worker three times if he would still be able to visit Denmark. Grandmother wrote to the court reporting that Christian and Step-Grandfather “share[d] a special bond which is indescribably close” and that “Christian emulate[d] everything [Step-Grandfather] does and he needs that guidance that only a ‘father’ can give a young boy of eight,” and opining that “[b]oys need a father and [Step-Grandfather] has filled that gaping hole in Christian’s life where his real father [Grandmother’s son] is unavailable and probably will never be there for Christian.” Grandmother was concerned that Christian not be moved again and asked that the juvenile court grant her and Step-Grandfather guardianship over Christian.

In a March 2018 addendum report, the Agency recommended that the juvenile court select guardianship with Christian’s grandparents as the permanent plan, with liberal visitation with Mother.

Mother, meanwhile, filed an addendum to her October 2016 section 388 petition and asked for Christian to be placed with her. She provided a reference letter from her manager, proof of attendance at 12-step meetings to help maintain sobriety, and a letter

from a program where Mother had attended 46 parenting classes over the previous two years. Mother testified at a contested hearing in March 2018 about arrangements she had made to care for Christian if he were returned to her, such as adjusting her work schedule and moving out of her previous “garage unit” where Christian would not have been able to join her, and researching schools, after-school programs, and a summer camp. When asked why it would be in Christian’s best interests to be placed with her, Mother testified, “I’m his mom. You know, he was with me for the first few years of his life. You know, I did make a mistake, and I got clean, and I’m doing so much better now. And I want to be there for him and be able to raise him.”

The juvenile court concluded that Mother had met her burden under section 388 to establish a sufficient change of circumstances, because she had maintained her sobriety for a sustained period of time. The question of whether Mother had established that returning Christian to her care was in his best interest was a “much closer” one for the court. The court did not want to “quickly undo such a successful placement” in Denmark and concluded that there were “simply too many uncertainties” to find that returning Christian to Mother was in his best interest. The court did not, however, want to “close the door” on the possibility of return, and it proposed having Christian placed with Mother for an extended visit over the summer. The court ultimately ordered that Christian have a month-long visit with Mother starting on July 7, 2018.

After granting a brief continuance, the juvenile court held a permanency planning hearing (§ 366.26) in May 2018. The juvenile court selected guardianship with the grandparents as the permanent plan and directed Mother to file a further section 388 petition after the summer visit if she continued to seek custody of Christian. No appeal was taken from the court’s order.

Christian began his month-long visit with Mother in July, and the visit went well. Christian told a social worker that he liked Mother’s “tiny house” and that his bed was more comfortable than the one where he slept in Grandmother’s home. When the social worker asked Christian what she should tell the juvenile court about his wishes, “Christian looked directly at [the social worker] and said he ‘wants to live with his

mother in America.’ ” He further expressed he would like to visit his grandparents during winter break and for two weeks during the summer. The social worker reported that when she “asked Christian if it would be okay for him to go to school in Denmark and visit with his mother at Christmas and summer and he said that he really wanted it ‘the other way around’ and be with his mom. Christian has been consistent with telling [the social worker] for the past year that he wants to live with his mother.”

Mother filed the section 388 petition that is the subject of this appeal on July 30, 2018 (July 2018 section 388 petition). She requested that the juvenile court terminate the guardianship and that eight-year-old Christian be returned to her care. At the time of the July 2018 section 388 petition, Mother had been clean and sober for three years, and she had been steadily employed for more than two years.

The Agency opposed Mother’s petition. The Agency also was concerned that Grandmother would be reluctant to support the relationship between Christian and Mother. But the Agency was concerned that Mother had “not had the opportunity to demonstrate her ability to parent Christian beyond this most recent Court ordered one month visit” and that Mother did not have a sufficiently stable support system.

The juvenile court held a contested hearing on August 6, 2018, and Christian testified in chambers. When his attorney asked Christian how he felt during his visit with Mother, Christian responded, “I feel great and I feel to be good back [*sic*] in America. Been a long time and like a lot of stuff, I forgot so” County counsel asked Christian about why he preferred to be with Mother, and Christian testified, “That’s how I liked it because this is not like a normal thing for kids. Like I would see all my other friends in Denmark, they have moms and dads. I don’t even know where my dad is and I can’t even not [*sic*] hang out with my mom like I used to. I only like spent four years with my mom and then that’s it because my parents went to drugs. But they made bad choices, but it’s okay because people do that sometimes. They freak out. It’s like me. I freak out a lot.” It came out during testimony that during his extended stay with Mother, Christian was sometimes left home alone while Mother and her boyfriend were at work. Christian asked the judge, “But like the first thing I want to say to the Judge is, I would just say

now, like are you mad like if I be home alone? Because it's like a reason because like the bosses say you have to get up really early in the morning, you have to go, and no one can babysit me. [¶] Like are you mad about that?" The judge assured Christian he was not mad and that "[t]here's nothing that you can do or say happened to you that will make me mad at you."

Toward the end of Christian's testimony, he explained the reason he wanted to stay with Mother was "because like in Denmark, it's hard to talk to my mom on the phone because we have poor connection. But in America, I could just see her and not talk—I could touch. Like on the phone, I can only talk and see. I could do everything with her. [¶] But the reason I wanted to talk to you is because it's just not like a normal thing for kids. It's not really actually. Like you will see like kids having the time of their lives with their parents. And look at me. I'm like—I don't really have that much fun in Denmark because I hardly actually see my friends. So that's why I just want to live here and if you can make that decision, I'll be really happy." He further explained that he was "having not that good time [in Denmark]. Well, sometimes. Because my grandpa have to work. Grandma won't take me out because she does a lot of work. She has to cook, clean, take out the—no, I do that. And she usually cleans the whole house. [¶] But the only problem is that—that like I'm 13,000 miles away. My mom doesn't have a passport, I think so."

After Christian testified, Mother's attorney argued that Christian should be returned to Mother's care. County counsel, by contrast, argued that Christian's interest in his stability and continuity of his permanent plan would be promoted by continuing the legal guardianship with the grandparents in Denmark. Christian's counsel stated that it was "a very difficult decision to make" because it was clear that Christian wanted to be with Mother, but "an eight-year-old doesn't always get to decide where he lives and as his guardian ad litem, I'm not always bound by my client's decision, but it does weigh on me and it weighs on me very heavily." Counsel ultimately stated that "while it's a close call, I would be in agreement with mother's petition. I don't know the logistics of how we do that. We might be here for hours figuring that out, but that—I think on balance,

I'm persuaded by mother's petition based on all those facts. It is not a clear case one . . . way or the other and I really worry that I'm making the wrong call. I really do. But based on what— largely on my client's testimony and his wishes, that tilts it for me."

The juvenile court sided with the Agency, denied Mother's July 2018 section 388 petition, and continued Christian's guardianship with the grandparents. The court acknowledged that it was "a very close call" but concluded that remaining with Mother was not "critical to the child's emotional and psychological well-being." The court noted that Christian's guardianship was "a stable and successful placement," and Christian was "thriving" there. It concluded that Mother had not met her burden to show changed circumstances or that undoing Christian's placement would be in his best interest. This appeal followed.

II. DISCUSSION

Mother argues that the juvenile court abused its discretion when it denied her July 2018 section 388 petition. We acknowledge, as has just about everyone involved with the proceedings below, that this was a close call and that there was no question that Christian wanted to be with Mother and that her home would provide a suitable placement. But we cannot agree, on the record before us, that the juvenile court abused its discretion.

Section 388 allows interested parties to petition for a hearing to change or set aside a prior court order on the grounds of "change of circumstances or new evidence." (§ 388, subd. (a)(1).) The burden of proof at any such hearing is on the moving party to show by a preponderance of the evidence both that there are changed circumstances or new evidence and that a change in court order would be in the best interest of the child. (§ 388, subd. (b); *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re D.B.* (2013) 217 Cal.App.4th 1080, 1089.) A ruling on a section 388 petition is "committed to the sound discretion of the juvenile court, and the [juvenile] court's ruling should not be disturbed on appeal unless an abuse of discretion is clearly established." (*Stephanie M.*, at p. 318.) "Thus, we may not reverse unless the juvenile court exceeded the bounds of

reason, and we have no authority to substitute our decision for that of the lower court where two or more inferences can reasonably be deduced from the facts.” (*D.B.*, at p. 1089.)

We agree with Mother that there is evidence in the record that supported returning Christian to her care. And her argument that she had established sufficient changed circumstances is well taken. In finding that Mother had not established changed circumstances, the juvenile court apparently focused on the few months between when it ordered guardianship in May 2018 and when it considered Mother’s section 388 petition in August. While it may be true that there were no dramatically changed circumstances during that time, the court did have new evidence about the bond between Mother and Christian following their extended, unsupervised visit. (*In re D.B.*, *supra*, 217 Cal.App.4th at p. 1093 [§ 388 petition may be based on previously unavailable new evidence, as opposed to changed circumstances].)

But Mother also needed to establish that placing Christian with her would be in his best interests. We recognize that it was undisputed that Mother’s home would be a safe and suitable placement, that Mother and Christian shared a strong bond, and that Christian expressed a consistent desire to be placed with Mother. That is why all parties recognized that the placement decision was a close call. But there also was evidence supporting the juvenile court’s denial of Mother’s July 2018 section 388 petition. Although Mother had made significant efforts to find the best housing possible that would be suitable for Christian, she was reliant on her boyfriend’s income to pay for that housing and might not be able to afford it if the relatively new relationship were to end. The juvenile court also raised concerns about Christian being left unsupervised while in Mother’s care, especially given the way the issue was raised with the court. The juvenile court’s denial was based on the fact that changing Christian’s stable placement would not be in his best interests at this post-permanency stage in the proceedings, a decision that certainly does not fall outside the bounds of reason. We cannot substitute our judgment for that of the juvenile court, even if we might have made a different decision in the same situation.

III.
DISPOSITION

The juvenile court's August 6, 2018 order is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Banke, J.